No. 17-965

IN THE
Supreme Court of the United States

DONALD J. TRUMP, President of the United States, ET AL., *Petitioners*,

v.

STATE OF HAWAII, ET AL., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CHICAGO, LOS ANGELES, NEW YORK, PHILADELPHIA, AND OTHER CITIES AND COUNTIES, JOINED BY THE U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Proclamation's nationality-based discrimination violates the Immigration and Nationality Act of 1965.

2. Whether the Proclamation's religious discrimination violates the Establishment Clause.

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BRIEF OF CHICAGO, LOS ANGELES, NEW YORK, PHILADELPHIA, AND OTHER CITIES AND COUNTIES, JOINED BY THE U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici include some of the largest cities and counties in the United States.[1] The U.S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,400 cities at present. Each city is represented in USCM by its chief elected official, the mayor. *Amici* are categorically opposed to

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief, in whole or in part, and no person other than *amici* contributed monetarily to its preparation or submission. Petitioners have provided a blanket letter of consent, and respondents have consented to the filing of this brief.

Proclamation No. 9645, which discriminates invidiously on the basis of national origin and religion and will significantly undermine the safety, economic well-being, and social cohesion in our communities and across the United States.

Our cities are heavily dependent on the contributions of immigrants.[2] Of the 16.6 million residents of Chicago, Los Angeles, New York City, and Philadelphia, more than five million are immigrants, who hail from more than 150 countries.[3] These cities account for almost one-fifth of the Nation's gross domestic product.[4] As of 2015, approximately 210,200 residents in the Chicago, Los Angeles, and New York City metropolitan areas were born in four of the Muslim-majority countries targeted by the Proclamation.[5]

Chicago, Los Angeles, and New York City are

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[2] *Immigrants & Competitive Cities*, Americas Society/Council of the Americas, http://www.as-coa.org/sites/default/files/ ImmigrantsandCompetitiveCities.pdf.

[3] Support for the data cited is in the appendix to this brief.

[4] Ted Hesson, *Why American Cities Are Fighting to Attract Immigrants*, http://www.theatlantic.com/business/archive/2015/07/us-cities-immigrants-economy/398987/ (NYC, LA, Houston, and Chicago are roughly 1/5 of GDP).

[5] Alan Berube, *These communities have a lot at stake in Trump's executive order on immigration*, http://www.brookings.edu/blog/the-avenue/2017/01/30/these-communities-have-a-lot-at-stake-in-trumps-executive-order-on-immigration/

some of their jurisdictions' largest employers, collectively employing approximately 365,000 people. In New York City, 33% of city workers are foreign-born; in Los Angeles, 22% are. Immigrants also make up a substantial portion of our cities' private workforces: 46% of the 4.3 million workers in New York; 25.7% of the 1.35 million workers in Chicago; and 17% of the more than 650,000 workers in Philadelphia. At least 7,200 private employees work on H1B international visas in Chicago alone, and Chicago is home to approximately 110,000 immigrant entrepreneurs. Immigrants are a majority of New York City's business owners; more than 40% in Los Angeles; 20% in Chicago; and 14% in Philadelphia.

Chicago and Los Angeles welcome and resettle some of the largest numbers of refugees in the United States. In 2016, approximately 2,091 refugees resettled in the Chicago area, including nearly 764 from the targeted countries. 2,322 resettled in the Los Angeles area, including 1,808 from Iran. 794 refugees arrived in Philadelphia, including 253 from the targeted countries. Approximately 1,300 refugees resettled in New York City from October 1, 2012 through September 30, 2016. And from October 1, 2016 through September 2017, our cities together became home to more than 3,000 refugees.

Chicago, Los Angeles, New York City, and Philadelphia together have 174 four-year colleges and universities, with more than 100,000

international students. Foreign students have begun to shun the United States.[6] Chicago is also home to 32 major hospitals, and Philadelphia is home to 31, which serve thousands of international patients a year. The Middle East is the top source of patients traveling to the U.S. for medical care.[7]

Like the two Executive Orders before it, the Proclamation is as misguided as it is unconstitutional. Our cities serve as gateways for immigrants and refugees starting new lives in America. And when they have come, "[e]verywhere immigrants have enriched and strengthened the fabric of American life."[8] Indeed, perhaps uniquely in the world, the identity of American cities has been forged from the toil of immigrants.

But beyond our ideals, the Proclamation subverts the very national security purpose it claims to serve. With decades of experience policing neighborhoods that are home to immigrant populations, *amici* are keenly and uniquely aware that frightened or

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[6] Shane Savitsky, *Foreign Students Have Begun to Shun the United States*, http://www.axios.com/international-students-are-staying-away-from-theunited-states-2509719080.html.

[7] Kristen Schorsch, *How Trump's Travel Ban Could Hit Medical Tourism Hard*, http://www.chicagobusiness.com/article/20170201/news03/170209996/how-trumps-travel-ban-could-hit-medical-tourism-hard.

[8] John F. Kennedy, *A Nation of Immigrants* 3 (Harper rev. ed. 2008).

ostracized residents are reluctant to report crimes, against themselves or others, or behavior that should, in the interest of safety and national security, be reported as suspicious. Although this hurts the entire Nation, the effects on *amici* are especially profound. Chicago, Los Angeles, New York City, Philadelphia, and the other *amici*, as financial, political, and cultural hubs, draw unique attention from individuals looking to cause harm in this country. Additionally, local law enforcement officers play an increasingly important role in detecting and protecting against national security threats. For these and other reasons, cities are a crucial part of the first-line defense against terrorism.[9] And to serve these purposes, our cities must be able to work with everyone in our diverse communities. Even at the strictly local level, the safety and security of our residents and visitors depends upon cooperation between the residents and local police. The U.S. Department of Justice's own Office of Community Oriented Policing Services has emphasized this fact

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[9] *E.g.*, Mitch Silber & Adam Frey, *Detect, Disrupt, and Detain: Local Law Enforcement's Critical Roles in Combating Homegrown Terrorism and the Evolving Terrorist Threat*, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2508&context=ulj; David Thacher, *The Local Role in Homeland Security*, 39 Law & Soc'y Rev. 635 (Sept. 2005), http://deepblue.lib.umich.edu/bitstream/handle/2027.42/73848/j.1540-5893.2005.00236.x.pdf?sequence=1; *DHS Announces Expansion of the Securing the Cities Program*, http://www.dhs.gov/news/2015/09/14/dhs-announces-expansion-securing-cities-program.

time and again.[10] In short, by targeting immigrants based on national origin and religion, the Proclamation undermines trust between our law enforcement agencies and our immigrant communities. That, in turn, makes *all* of our residents and visitors, and indeed everyone in the country, less safe.

Overt discrimination presents other dangers. Immigrant residents of our cities who feel unwelcome are more likely to cut themselves off from public life and participation in public programs. They may refuse to participate in public health programs such as vaccinations or seek medical care for contagious diseases. They may keep their children out of school to avoid harassment and stay away from mosques because of the fear that they will be unsafe. These effects will not be limited to individuals from the targeted countries. Thousands of other Muslims in the *amici* cities and counties have reason to worry that the public will embrace the anti-Muslim stance embodied in the Proclamation. It therefore places millions of people at risk of harm or being driven underground, which makes both those residents and our cities less safe.

Worse still, the message that citizens of majority-Muslim countries threaten national security conveys that members of Muslim communities, and

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[10] *E.g.*, *Community Policing Defined*, Dep't of Justice, Office of Community Oriented Policing Services (rev. 2014), http://ric-zai-inc.com/Publications/cops-p157-pub.pdf.

other immigrant communities, are to be distrusted and feared. Thus, targeting Muslims makes these residents more vulnerable to victimization, and adds to the difficulty local governments face in trying to provide protection. At the extreme, this climate gives rise to hate crimes. The Southern Poverty Law Center reports that in the 34 days following the 2016 Presidential election, there were 1,094 hate crimes and lesser hate incidents; 315 were categorized as anti-immigrant, and 112 as anti-Muslim.[11] In cities across the country, hate crimes have risen dramatically since that election. New York City reported twice the number of hate crime incidents in the three months after the election compared to the same period a year prior. In Los Angeles, hate crime incidents doubled in the month following the election. And in the first five weeks of 2017, the number of hate crimes reported in Chicago was more than triple the number for the same period in 2016. In 2017, Philadelphia received 40 reports of hate crimes, double that from 2016 and more than the total from the prior two years combined. FBI data published reflects a 27% jump in anti-Muslim hate crime offenses between 2015 and 2016.[12] This

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[11] *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, http://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election.

[12] Compare Federal Bureau of Investigation, *2015 Hate Crime Statistics: Incidents, Offenses, Victims, and Known Offenders by Bias Motivation*, https://ucr.fbi.gov/hate-crime/2015/tables-and-data-declarations

coincides with President Trump's call, as a candidate, for a Muslim ban on December 7, 2015. J.A. 119.

The Proclamation also undermines local laws prohibiting discrimination based on national origin and religion, among other invidious grounds, in all aspects of life – housing, employment, public accommodation, transportation, schooling, and government services. *E.g.*, Municipal Code of Chicago, Ill. §§ 2-160-010, 5-8-010, 9-115-180, 13-72-040; Los Angeles Charter §§ 104(i), 1024; Los Angeles Admin. Code §§ 4.400, 10.8, 10.13; New York City Charter § 900; N.Y.C. Admin. Code §§ 4-116; 8-107; Phila. Code §§ 9-1101, 9-1103, 9-1106, 9-1108. Such laws reflect *amici*'s strong commitment to equal rights, as well as their belief that diversity enriches everyone and diminishes no one. The Proclamation's blatant discrimination turns the clock back on civil rights.

The Proclamation deprives our communities and our residents of the opportunity to interact with persons from the targeted countries, including not just people who are barred but others who decide not to travel to the United States, much less to live here. These individuals enrich us with their hard work and perseverance, their unique skills and training, and their customs and celebrations. Our cities would be bereft without them. Foreign residents and

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/1tabledatadecpdf with Federal Bureau of Investigation, *2016 Hate Crime Statistics: Incidents, Offenses, Victims, and Known Offenders by Bias Motivation*, https://ucr.fbi.gov/hate-crime/2016/tables/table-1.

students also make an immeasurable contribution to America's ability to participate in the global economy, among other reasons because fewer than half of Americans have passports.[13] Thus, many Americans become acquainted with other cultures only if visitors and students from foreign countries come here.

The Ninth and Fourth Circuits properly determined that respondents and the plaintiffs in *Int'l Refugee Assistance Project v. Trump* were likely to succeed on their claims, which were brought under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Establishment Clause, and would suffer irreparable harm if the Proclamation were not enjoined. *Hawaii v. Trump*, Pet. App. 25a-53a, 56a-58a; *Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 269-70, 271 (4th Cir. 2018) (en banc) ("*IRAP*"). Further supporting those rulings, the Proclamation, and the anti-immigrant principles behind it, will cause irreparable harm to cities and counties across the United States. It undermines trust and cooperation between local law enforcement and immigrant communities, which is necessary to effectively detect terrorist activity and combat crime. It also harms our businesses, educational institutions, and hospitals; limits our labor pool; decreases our tax revenues; and dampens tourism in our communities. And it tramples our

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[13] Sally Herships, *Trump's travel ban worries international students*, http://www.marketplace.org/2017/02/08/world/overseas-students.

cities' history; offends our values; and undermines our laws, including those prohibiting discrimination on precisely the invidious grounds reflected in the Proclamation. *Amici* file this brief to urge the Court to affirm.

SUMMARY OF ARGUMENT

The Proclamation unlawfully discriminates based on national origin. The INA prohibits precisely this arbitrary, blanket discrimination. Petitioners' assertion that the President is free to circumvent the INA's clear ban on nationality-based discrimination is untenable.

The Proclamation also violates the Establishment Clause. Although the Ninth Circuit did not reach that claim, the Fourth Circuit properly relied on compelling evidence that the Proclamation continues to be motivated by President Trump's stated belief that "Islam hates us" and his related desire to exclude Muslims. *IRAP*, 883 F.3d at 266 n.15. Broadcast many times and in many ways, the President's anti-Muslim message has been clear and consistent. Accordingly, the national security considerations petitioners cite are, at best, a secondary consideration. In addition, the Proclamation's modifications to the prior travel bans fall far short of curing the prior, egregious Establishment Clause violations.

ARGUMENT

I. THE PROCLAMATION UNLAWFULLY DISCRIMINATES BASED ON NATIONAL ORIGIN.

Discrimination based on national origin violates the INA. "During most of its history, the United States openly discriminated against individuals on the basis of race and national origin in its immigration laws." *Olsen v. Albright*, 990 F. Supp. 31, 37 (D.D.C. 1997). That "national origins quota system ha[d] strong overtones of an indefensible racial preference." *A Nation of Immigrants*, at 45. Accordingly, "[t]hroughout the latter half of the Twentieth Century, Congress moved away from such discriminatory policies. The most profound change was the [INA]," which "eliminated discrimination on the basis of race and national origin." *Olsen*, 990 F. Supp. at 37. The Ninth Circuit properly concluded that the Proclamation violates the INA because it is contrary to the bar on nationality discrimination set forth in 8 U.S.C. § 1152(a)(1)(A), and exceeds the scope of the President's authority under 8 U.S.C. § 1182(f).

A. The Proclamation Violates Section 1152(a)(1)(A).

The INA could not be more clear: "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because

of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A).

The Proclamation is in direct violation of this provision. As the Ninth Circuit concluded, the Proclamation violates Section 1152(a)(1)(A) because the indefinite entry suspensions that it imposes "constitute nationality discrimination in the issuance of immigrant visas." Pet. App. 53a.

Although petitioners argue that Section 1152(a)(1)(A) does not apply because it addresses issuance of a visa, rather than "entry" into the United States, Pet. Br. 49-52, the Ninth Circuit correctly rejected that artificial distinction. As the court noted, petitioners had conceded—as they have throughout the litigation over the various iterations of the travel ban—that the practical effect of the entry restrictions imposed by the travel bans will be that visas are not issued to nationals from the targeted countries. Pet. App. 50a, 51a n.23. Moreover, there was no reason to think that the broad and historic anti-discrimination mandate of Section 1152 could "be so easily be circumvented." *Id.* at 51a.

Finally, there is no merit to petitioners' assertion that the anti-discrimination mandate of Section 1152(a)(1)(A) is superseded by the powers granted to the President under 8 U.S.C. § 1182(f). As we explain below, the Proclamation exceeds the authority that provision grants to the President. But in any event, Section 1152(a)(1)(A) is properly understood as a limitation on the authority granted

under Section 1182(f). Although Section 1182(f) grants the President authority to suspend entry of a class of immigrants whose entry "would be detrimental to the interests of the United States," Section 1152(a)(1)(A) declares that it is *not* in the national interest to discriminate based upon national origin. This reading harmonizes the two provisions, and avoids a construction that would render Section 1152(a)(1)(A) superfluous. Because Section 1182(f) is constrained by Section 1152(a)(1)(A), Section 1182(f) no more empowers the President to discriminate on the basis of national origin than it would allow him to suspend immigration by women.

B. The Proclamation Exceeds The Authority Granted To The President Under Section 1182(f).

Petitioners' assertion that Section 1182(f) provides the President with boundless authority to implement the restrictions imposed by the Proclamation is wrong—for a number of reasons.

First, Section 1182(f) authorizes the President to "suspend" the entry of aliens under certain circumstances. "The word 'suspend' connotes a temporary deferral." *Hoffman ex rel. NLRB v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1277 (9th Cir. 1976). Unlike the prior Executive Orders, however, "the Proclamation risks producing a virtually perpetual restriction." Pet. App. 27a. Thus, Section 1182(f) does not apply.

Second, petitioners' construction of Section 1182(f) conflicts with the Congressional

determinations that are reflected in other provisions of Section 1182. In Section 1182(a)(3)(B), Congress set forth the criteria that guide the entry of an alien who may present a risk of terrorist activity, and Section 1182(a)(3)(A) addresses entry where there may be a risk of "any other unlawful activity." Notably, these provisions mandate an *individualized* inquiry; they do not authorize blanket exclusion based on the applicant's nation of origin. Furthermore, with respect to vetting procedures, Congress already "has considered the reality that foreign countries vary with respect to information-sharing and identity-management practices, as well as terrorism risk." Pet. App. 30a.

Third, petitioners' construction of Section 1182(f) renders that provision an unconstitutional delegation of Congressional authority. The formulation of policies concerning the entry of aliens "is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954). Yet, in petitioners' view, Congress has delegated to the President unbounded authority to issue broad entry restrictions—indeed, restrictions that effectively nullify immigration provisions enacted by Congress, such as Section 1152(a)(1)(A). Pet. App. 40a (concluding that "the Proclamation's sweeping assertion of authority is fundamentally legislative in nature"). Section 1182(f) should be construed to avoid any such violation of the requirements concerning separation of powers.

In addition, even considering Section 1182(f) in isolation, the Proclamation's exclusion of immigrants from the targeted countries, solely because of the happenstance of their birthplace, cannot stand. The

plain language of Section 1182(f) requires a determination that the entry of aliens or a class of aliens is "detrimental to the interests of the United States," and it is simply not possible to say that every single person, or even a majority of persons, born in the targeted countries presents a security risk to the United States. The use of nationality as the sole basis for suspending entry means that nationals without significant ties to the designated countries, such as those who left as children, are barred from entry. Even on immigration matters, discretion must be exercised "in a reasoned manner." *Judulang v. Holder*, 565 U.S. 42, 53 (2011). The Proclamation's classification based on national origin is not rational.

II. THE PROCLAMATION VIOLATES THE ESTABLISHMENT CLAUSE.

The Establishment Clause prohibits any "law respecting an establishment of religion." It enshrines, in the first words of the First Amendment, the special protection that the Framers intended for religion to have from governmental compulsion. Those words were "written by the descendants of people who had come to this land precisely so that they could practice their religion freely," and were "designed to safeguard the freedom of conscience and belief that those immigrants had sought." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 881 (2005) (O'Connor, J., concurring); see also James Madison, *Memorial and Remonstrance Against Religious Assessments*, reprinted in 8 THE PAPERS OF JAMES

MADISON 299 (Robert A. Rutland ed., 1973) ("The Religion . . . of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.").

Consistent with these principles, the "clearest command" of the Establishment Clause is that the government cannot favor or disfavor one religion over another. *Larson v. Valente*, 456 U.S. 228, 244 (1982); accord *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535-36 (1993) ("In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion . . . ."); *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (Establishment Clause "forbids hostility toward any [religion]"); *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968) ("[T]he State may not adopt programs or practices . . . which aid or oppose any religion. This prohibition is absolute.") (internal citations and quotation omitted).

The Proclamation violates the Establishment Clause by disfavoring Muslims. That the Proclamation does not explicitly reference Islam is beside the point. The Establishment Clause "extends beyond facial discrimination" and "protects against governmental hostility which is masked, as well as overt. The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." *Lukumi*, 508 U.S. at 534 (citation and quotation omitted). If a policy fails any part of the three-part

test of *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), it violates the Establishment Clause. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

The Proclamation fails at least the first part of the *Lemon* test by disfavoring Muslims. Six of the eight targeted countries are Muslim-majority countries. All the available evidence points to the unmistakable conclusion that the predominant purpose of the Proclamation was religious discrimination, and that the stated secular purpose of protecting national security was, at best, secondary. Moreover, the Proclamation does not adequately cure the serious Establishment Clause violations in the earlier Executive Orders.

A. The Primary Purpose Of The Proclamation Is To Discriminate Against Muslims.

President Trump's formal statement calling for "a total and complete shutdown of Muslims entering the United States," J.A. 119, was a defining moment of his campaign, and a policy position he defended by asserting that "Islam hates us," J.A. 120.[14] Just one week after swearing the oath of office, he turned that

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[14] Campaign statements may not always evince intent, since candidates sometimes pledge one thing and do another once elected. But President Trump confirmed the discriminatory purpose of his travel bans after taking office—and they have functioned exactly as he promised when campaigning.

campaign rhetoric into official policy, issuing EO-1 to ban travel to the United States from seven Muslim-majority countries. After the courts enjoined EO-1, President Trump issued EO-2, making minor technical changes to EO-1, but preserving the ban on entry of nationals from six of these seven countries. All the while, he repeatedly confirmed that these Executive Orders spring from the same discriminatory well as his campaign promise. He declared, for example, that EO-2 was "a watered down version of the first one" and lamented that "we ought to go back to the first one and go all the way." J.A. 131. He further publicly complained that the Department of Justice should have stayed with the "original Travel Ban," not the "watered down, politically correct version." J.A. 132.[15]

The Proclamation is nothing more than a repackaged version of the same discriminatory policy. The Proclamation again targets Muslims—of the eight countries whose citizens are banned, five are the same Muslim-majority countries that have been banned from the beginning, and another

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[15] President Trump's description of the EO-2 as "politically correct" refers to criticisms of his promise to ban Muslims. At the January 14, 2016 Republican Candidates' debate, candidate Trump declined the opportunity to retract his comments about banning Muslims, explaining "Look, we have to stop with political correctness." Republican Candidates Debate in North Charleston, South Carolina, January 14, 2016, http://www.presidency.ucsb.edu/ws/index.php?pid=111395

Muslim-majority country, Chad, has been added. And now the ban is indefinite.

Adding fewer than 100 North Korean citizens, J.A. 135, and certain Venezuelan officials and their families, does not change this. These additions are window dressing. They reflect entirely different foreign policy concerns from those petitioners claim as a basis for the list of Muslim countries. North Korea is a rogue state, and Venezuela is hostile to the United States. And even then, these restrictions are nearly pointless. North Korean citizens do not emigrate in any event; and only certain Venezuelan government officials and their families are barred—private Venezuelan citizens are not. Thus, these separate agenda items cannot conceal the religious motivation for targeting the Muslim countries. That the Proclamation also bars a small number of non-Muslims from the targeted Muslim countries likewise does not matter. That makes its religious gerrymander imprecise and inefficient; it does not make it constitutional. Overwhelmingly, the Proclamation operates to exclude Muslims from entering the United States, precisely as President Trump has long promised. Collateral damage to non-Muslims is not evidence of a secular purpose.

Petitioners ask the Court to ignore the wealth of evidence of religious animus. Pet. Br. 64-68. But the effect of such animus is very real for the Muslim communities that the President has disparaged and for those who seek to do them harm. Official pronouncements from the President that Muslims are dangerous have real-world effects on the

perceived and actual safety of *amici*'s residents, and indeed the entire country. These consequences do not go away with palliative words in a brief.

The Fourth Circuit concluded—even without relying upon pre-election statements—that "[t]o the objective observer, the Proclamation continues to exhibit a primarily religious anti-Muslim objective." *IRAP*, 883 F.3d at 269. The record fully supports that determination.

B. The Asserted National Security Rationale For The Proclamation Is, At Best, Secondary.

It is of no moment that the Proclamation professes a national security purpose, or that it lacks an explicit religious preference. "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Lukumi*, 508 U.S. at 534. Instead, it is "the duty of the courts" to distinguish a "sincere" secular purpose from one that is a "sham," or that is "secondary" to a "predominately religious" purpose. *McCreary*, 545 U.S. at 862. The facially legitimate reasons petitioners claim are secondary to the Proclamation's intended discrimination against Muslims.

As the Ninth Circuit noted, from 1975 to 2017, no one has been killed in a terrorist attack in the United States by nationals from any of the eight countries designated in the Proclamation. Pet. App. 59a. Nor is there a legitimate concern that individuals

from the countries targeted by the Proclamation present a heightened risk of perpetrating such an attack in the future; to the contrary, numerous former national security officials have attested that there is no national security rationale for these measures against the Muslim-majority countries targeted, J.A. 234-41, 244-74, 346-67. Indeed, "[t]he Proclamation makes no finding whatsoever that foreign nationals' nationality alone renders entry of this broad class of individuals a heightened security risk to the United States." Pet. App. 45a.

Moreover, the information-sharing deficiencies the Proclamation identifies do not establish the need for an unprecedented, overly broad travel ban. Notably, even with the Proclamation enjoined, visa applicants from the targeted countries still will be screened through the standard, individualized vetting process.

Although petitioners now suggest that the Proclamation is the independent product of DHS review, Pet. Br. 6-9, they have "expressly disavowed any claim that the review could save the Proclamation [and] conceded that the Proclamation rises and falls on its own four corners," *IRAP*, 883 F.3d at 268-69. In any event, because petitioners have not publicly disclosed the review, they have "provided a reasonable observer no basis to rely on the review" in assessing the credibility of the claimed national security rationale. *Id.* at 268.

Thus, a reasonable observer would conclude that national security considerations are secondary to

President Trump's stated purpose to discriminate against Muslims.

C. The Proclamation Does Not Cure The Serious Establishment Clause Violations Of The Executive Orders.

The DHS Review and the Proclamation's modifications to EO-2 are also insufficient to salve the constitutional violation. "[T]he Government's cure must be made 'as persuasive as the initial' violation." *Int'l Refugee Assistance Project v. Trump*, 265 F. Supp. 3d 570, 623 (D. Md. 2017) (quoting *Felix v. City of Bloomfield*, 841 F.3d 848 (10th Cir. 2016)), *aff'd*, *IRAP*, 883 F.3d 233. *McCreary* rejected the argument that the two defendant counties remedied their earlier Establishment Clause violation by modifying their courthouse displays of the Ten Commandments to add certain historical documents, such as the Declaration of Independence. The Court declined to limit its focus to only "the last in a series of governmental actions, however close they may all be in time and subject." 545 U.S. at 866. Noting that the counties had failed to repudiate their earlier resolutions endorsing the religious message of the displays, *id.* at 871-72, the Court concluded that a reasonable observer would not "swallow the claim that the Counties had cast off the objective so unmistakable in the earlier displays," *id.* at 872.

As in *McCreary*, the Administration's remedial efforts fall far short when assessed in light of the egregious Establishment Clause violations of the Executive Orders. Those Orders barred entry of

millions of members of what is a religious minority in this country—and that action was closely tied to explicit statements of animus towards that religious group. *See generally Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 572 (4th Cir. 2017) (en banc) (concluding that EO-2 "drips with religious intolerance, animus, and discrimination"), *vacated and remanded*, 138 S. Ct. 353 (2017). This frontal assault on the Establishment Clause came from the President himself. It was the focus of extensive nationwide attention, and applied nationwide.

The Proclamation is weak medicine for the serious harm wrought by the Executive Orders. As the Fourth Circuit observed, "instead of taking any actions to cure the 'taint' that . . . infected EO-2, President Trump continued to disparage Muslims and the Islamic faith." *IRAP*, 883 F.3d at 268. At no point has the President disavowed his intent to ban Muslims, and the Proclamation "doubles down on" the prior Executive Orders' fundamental approach. *Int'l Refugee Assistance Project*, 265 F. Supp. 3d at 624.

As important, petitioners seem to misunderstand what is needed to break with the past. Merely offering new justifications, even if they are non-discriminatory, for past actions that were driven by discriminatory animus does not suffice. That is why adding non-religious documents to a religious display did not cure the violation in *McCreary*. Just so here—adding two non-Muslim countries to a Muslim ban does not change or even obscure the

ban's purpose. That purpose was set at the outset and remains the purpose today.

Accordingly, petitioners failed to purge the taint of the prior Establishment Clause violations.

D. *Mandel* and *Din* Do Not Provide The Applicable Legal Framework.

Against the weight of Establishment Clause authority, petitioners offer *Kleindienst v. Mandel*, 408 U.S. 753 (1972), and *Kerry v. Din*, 135 S. Ct. 2128 (2015), to argue that the Court should apply rational-basis review and defer to the President's professed national security rationale without considering the evidence of his discriminatory intent. Pet. Br. 58-63. Those decisions do not support petitioners' sweeping position. Both cases involved discretionary decisions made by executive officers to admit or deny specific aliens under statutory immigration restrictions, the constitutionality of which was not challenged. Here, by contrast, the issue is whether the Establishment Clause constrains the President's ability to categorically exclude well over 150 million aliens, J.A. 356, based on religious animus, on which this Court properly has the final say. See *Fiallo v. Bell*, 430 U.S. 787, 793 n.5 (1977) ("Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens . . . ."); see also *INS v. Chadha*, 462 U.S. 919, 941-42 (1983) (federal government must choose "a constitutionally permissible means of implementing" immigration

rules); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (recognizing that federal government's power to exclude aliens is "restricted" by "the constitution itself").

Beyond that, petitioners' claim that *Mandel* applies only a "rational-basis standard," Pet. Br. 16, erroneously collapses a two-step analysis into a single step. Under *Mandel*, a court applies deferential rational-basis review only *after* first determining that the facts show "a facially legitimate and bona fide reason" for the challenged executive action. 408 U.S. at 770. That is a common approach. As the Court has explained, "governmental purpose is a key element of a good deal of constitutional doctrine," *McCreary*, 545 U.S. at 861, in areas as varied as the Equal Protection Clause, the dormant Commerce Clause, and the Free Exercise Clause, *ibid.* The Proclamation fails that first step, and thus does not receive rational-basis review, because a "discriminatory purpose raises [the] level of scrutiny required." *Ibid.* Accord, *e.g.*, *Lukumi*, 508 U.S. at 533; *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 & n.15 (1981); *Washington v. Davis*, 426 U.S. 229, 241 (1976).

The absence of a facially legitimate, bona fide reason for the Proclamation puts this case in stark contrast with *Mandel* and *Din* and defeats petitioners' bid for rational-basis scrutiny. In *Mandel*, the petitioners claimed that the Attorney General's decision not to grant a temporary nonimmigrant visa to a Belgian Marxist professor violated their First Amendment rights to hear him

speak. At the time, the Immigration and Nationality Act prohibited the admission of aliens "who advocate the economic, international, and governmental doctrines of world communism" or "who write or publish . . . the economic, international, and governmental doctrines of world communism." 8 U.S.C. §§ 1182(a)(28)(D), (G)(v) (1964). The Attorney General had discretion to waive this prohibition and grant visas to aliens on an individual basis. *Id.* § 1182(d)(3). Mandel admittedly fell within the prohibited class, 408 U.S. at 756, which petitioners did not challenge. As the Court noted, petitioners "concede that Congress could enact a blanket prohibition of all aliens falling into th[at] class . . . and that First Amendment rights could not override that decision." *Id.* at 767. Thus, Mandel's only recourse was to apply for the Attorney General's exercise of discretion to admit him, which was denied. *Id.* at 757-59. That is what the Court upheld, based on what the Court perceived to be "a facially legitimate and bona fide reason"—namely, Mandel's violation of the conditions of a previous visa. *Id.* at 770.

Likewise, in *Din,* a U.S. citizen (Din) challenged the federal government's denial of a visa to her husband, a former Taliban official, 135 S. Ct. at 2131, but not the constitutionality of the law prohibiting her husband's entry. These provisions excluded aliens who engaged in "terrorist activities," such as those who provided support to a terrorist organization or served as its representative. 8 U.S.C. § 1182(a)(3)(B)(i), (iii)-(vi). The narrow issue was whether the denial of a visa to Din's husband,

"without adequate explanation of the reason for the visa denial," deprived Din of due process. 135 S. Ct. at 2131. The plurality determined that Din was not deprived of any interest protected by due process, *id.* at 2138, but the concurring Justices concluded that, assuming that she had a protected interest, she had received all the process to which she was entitled, *id.* at 2141-42 (Kennedy, J., joined by Alito, J., concurring in the judgment). Justice Kennedy analogized the case to *Mandel,* because each case involved discretionary authority to grant waivers to immigration laws passed by Congress, where the laws themselves were not challenged. *Id.* at 2139-41. In that circumstance, the concurring opinion limited its inquiry to whether the federal government had provided a rationale that was "facially legitimate and bona fide for its action," *id.* at 2140 (quoting *Mandel,* 408 U.S. at 770), and found that it had because it cited the "specific statutory factors," *ibid.*, that controlled the consular officer's determination that Din's husband was ineligible for a visa, *id.* at 2141.

The facts of this case are very different. For one, in this case there was never a facially legitimate decision in the first place, since President Trump's religious animus and promise to act upon it predated the Proclamation. As a result, there is no Executive decision entitled to the deference shown in *Mandel* and *Din*. For another, this case does not present individualized determinations whether to admit one alien based on circumstances particular to him and under a statutory system that was not challenged. Instead, President Trump has barred all immigrants

from six Muslim countries on the basis of nothing particular to them, and without any consideration of individualized factors; and the legal basis for that decision is squarely challenged under the Establishment Clause. There is no basis for deference here.

In fact, in these circumstances, *Mandel* and *Din* are perfectly consistent with the Court's determination of intent in its Establishment Clause cases, since *Mandel* and *Din* call for the Court to consider the real reasons for the action when there is no facially legitimate basis, *or* where the basis is not bona fide. The term "bona fide" signifies "a thing done really, with a good faith, without fraud, or deceit, or collusion, or trust." *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 243 (1796). As Justice Kennedy explained in *Din*, *Mandel* allows courts reviewing immigration decisions to "look behind" the stated reasons for excluding an alien where there is "an affirmative showing of bad faith" on the part of the officer who denied the visa. 135 S. Ct. at 2141 (opinion concurring in the judgment). The Court's Establishment Clause cases likewise allow the courts to consider what is plain to any "objective observer." *McCreary*, 545 U.S. at 862. Here, there is a mountain of evidence of bad faith, and of the Proclamation's improper religious purpose. Whatever else might constitute bad faith, the dogged determination to pursue the blatantly unconstitutional objective of excluding Muslims from the country because they are Muslim does. For this reason, petitioners' arguments fail even under *Mandel* and *Din*.

* * * *

In short, this case presents no national security imperative, or even a legitimate question of Executive power. Instead, President Trump claims unbridled and essentially unreviewable authority to exclude—on a blanket basis—hundreds of millions of Muslims because they are Muslim. The Establishment Clause does not permit the President to do so.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

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CHICAGO

The population of Chicago is 2,707,965.[1]

Chicago has residents from approximately 124 foreign countries.[2]

Approximately 559,623 of Chicago's residents are immigrants.[3]

8,094 of Chicago's residents were born in Iran, Libya, Somalia, and Syria, and of those, 3,115 are non-citizens.[4]

Approximately 1.35 million people are employed in Chicago.[5] Of those, 25.7% are foreign-born immigrants,[6] including an estimated 1,975 non-citizen immigrants from the targeted countries.[7] The

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[1] U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates. Data are not available for Chad and Yemen.
[2] *Ibid.*
[3] *Ibid.*
[4] U.S. Census Bureau, American Community Survey PUMS 1-Year 2016 Data.
[5] U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates.
[6] *Ibid.*
[7] *Ibid.*

City of Chicago itself employs more than 33,000 people.[8]

Approximately 20% of Chicago's business owners are immigrants, of whom an estimated 0.7% come from the targeted countries.[9] The Chicago area is home to approximately 110,000 immigrant entrepreneurs.[10]

At least 7,200 private employees work in Chicago on H1B international visas.[11]

In 2016, approximately 2,091 refugees were resettled in our city, including 764 from the six targeted Muslim-majority countries.[12]

Chicago has 46 four-year colleges and universities, with more than 14,540 international students in the 2016-17 academic year.[13] City Colleges of Chicago (CCC) has seven colleges, with approximately 337

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[8] https://www.cityofchicago.org/city/en/depts/dhr/dataset/current_employeenamessalariesandpositiontitles.html

[9] https://www.americanimmigrationcouncil.org/research/

[10] http://www.newamericaneconomy.org/city/chicago

[11] http://www.foreignlaborcert.doleta.gov/performancedata.cfm

[12] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, http://ireports.wrapsnet.org/.

[13] National Center for Education Statistics, Integrated Postsecondary Education Data System and file:///Users/carabader/Downloads/Illinois-Open-Doors-2017.pdf

international students enrolled in the 2016-17 academic year but only 247 international students in the 2017-18 academic year. 134 of 2017-18 students self-reported as being from one of the targeted countries.[14]

Chicago's tourism industry accounts for $972 million a year in local tax revenue and $2.3 billion in hotel revenue alone.[15]

260 flights arrive at Chicago airports from international destinations every day, bringing 36,679 passengers.[16] Each international flight arrival yields approximately $212,000 in local economic impact.[17] In 2017, Chicago welcomed 55.2 million visitors, 1.47 million of whom visited from overseas.[18] Approximately 1,000 international visitors were from the six targeted Muslim-majority countries.[19]

In 2017, tourism brought $15.2 billion in direct spending to Chicago. Annually international visitors

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[14] Pamela Witmer, CCC.
[15] Alfred Orendorff , ChooseChicago.
[16] Erika Ituassu, Chicago Department of Aviation; U.S. DOT Form T-100.
[17] *Ibid*; Booz Allen Hamilton/Chicagoland Chamber of Commerce Study 1998, updated 2001.
[18] Alfred Orendorff, ChooseChicago.
[19] *Ibid.*

to Chicago spend an estimated $1.7 billion, generating $100 million in state and local taxes.[20]

The average overseas visitor spends about $3,600 per trip visiting Chicago.[21]

Tourists from the six targeted Muslim-majority countries account for an estimated $1.25 million of local economic impact per year.[22]

Chicago is home to 32 major hospitals,[23] which serve thousands of international patients a year. The Middle East is the top source of patients traveling to the United States for medical care.[24]

In Chicago, there were twice as many arrests for hate crimes in the three months after the 2016 Presidential election than during the same period in the prior year.[25] In the first five weeks of 2017, the number of hate crimes recorded in Chicago was more

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[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] D&B Hoovers accessed via World Business Chicago.
[24] http://www.chicagobusiness.com/article/20170201/news03/170209996/how-trumps-travel-ban-could-hit-medical-tourism-hard.
[25] Brandon Nemec, Mayor's Office liaison with Chicago Police Department.

than triple the number for the same period in 2016.[26] Additionally, hate crimes categorized as anti-Muslim or anti-Arab hit five-year highs in Chicago in 2016.[27] From January 1, 2017-November 15, 2017, Chicago police recorded 57 hate crime incidents.[28]

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[26] http://www.chicagotribune.com/suburbs/daily-southtown/news/ct-sta-hate-crimes-increase-st-0305-20170303-story.html.

[27] Zak Koeske, *Hate Crimes in Chicago Rose 20 percent in 2016, Marking 5-Year High, Police Data Show*, Chicago Tribune (Mar. 3, 2017).

[28] Chicago Police Department, Research and Development Division Report, November 15, 2017.

LOS ANGELES

The population of our metropolitan area (Los Angeles County) is 10.1 million people, with more than 3.9 million living within the city limits.[29]

We have residents from more than 135 foreign countries, and 185 languages are spoken here.[30]

At least 1.5 million of our city's residents are immigrants, 37.8% of our total population. Approximately 3.5 million – 34.5% – of Los Angeles County residents were born in another country.[31]

The Los Angeles metropolitan area has approximately 154,000 immigrants from the targeted countries, including 137,941 from Iran, 15,637 from Syria, 316 from Somalia, and 90 from Yemen.[32]

Our city employs approximately 45,000 people, 22% of whom are foreign-born immigrants.[33]

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[29] U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates.

[30] *Ibid.*; U.S. Census Bureau, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Older: 2009-2013.

[31] U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates.

[32] *Ibid.*

[33] City of Los Angeles analysis of personnel data.

40.2% of business owners in Los Angeles are immigrants.[34]

In 2016, approximately 2,322 refugees were resettled in Los Angeles County, including approximately 1,936 from the six targeted Muslim-majority countries, and 1,808 from Iran alone.[35]

185 flights arrive daily at LAX from international destinations bringing 31,000 passengers, including more than 150 passengers from the targeted Muslim-majority countries.[36]

The tourism sector of the local economy accounts for $21 billion a year in direct spending by visitors to Los Angeles County and $260 million in hotel taxes alone. Tourism supports approximately 500,000 jobs in the leisure and hospitality sectors.[37]

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[34] Analysis of data from the 2016 Current Population Survey by the American Immigration Council, using IPUMS-CPS; Sarah Flood, Miriam King, Steven Ruggles, and J. Robert Warren, *Integrated Public Use Microdata Series, Current Population Survey: Version 5.0* [dataset] (Minneapolis, MN: University of Minnesota, 2017).

[35] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center.

[36] LAX officials.

[37] Discover LA (https://www.discoverlosangeles.com/tourism/research).

In 2017, Los Angeles welcomed 48.5 million visitors, 7.3 million of whom were foreign nationals. Despite overall growth in foreign visitors to Los Angeles from 2016 to 2017, the number of visitors from the Middle East fell 10.5%, to 142,000 over that period.[38]

Foreign visitors to Los Angeles spent a combined $6.9 billion in 2016. At least 160,000 of those visitors hailed from the Middle East, and they spent at least $185 million in Los Angeles. While 2017 spending data by foreign nationals is still being tallied, the 10.5% decrease in visitors from the Middle East could mean as much as $19.4 million fewer dollars spent by such visitors in 2017.[39]

Los Angeles has at least ten four-year colleges and universities, and these have approximately 25,000 international students.[40]

In 2017, there were 254 total hate crimes reported compared to 229 hate crimes during 2016, a 10.9% increase.[41]

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[38] *Ibid.*
[39] *Ibid.*
[40] University enrollment data.
[41] LAPD Compstat data.

NEW YORK CITY

The population of New York City is 8,461,961 as of 2016.[42]

New York City has residents from more than 150 foreign countries.[43]

New York City is home to over 3.1 million foreign-born New Yorkers, about 37% of the City's population.[44]

Approximately 49% of New Yorkers speak a language other than English at home.[45]

New York City is home to over 36,000 individuals born in Chad, Yemen, Syria, Iran, Somalia, and Libya.[46]

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[42] U.S. Census Bureau, 2012-2016 American Community Survey Five-Year Estimates.

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

[46] U.S. Census Bureau, 2016 American Community Survey One-Year Estimates. Data are not available about residents born in North Korea or Chad. This figure does not include residents born in Venezuela and Iraq because, while nationals of those countries are subject to certain entry restrictions or heightened scrutiny, those rules are significantly different from

Approximately 4.3 million people are in the labor force in New York City; of those, 46% are foreign-born immigrants.[47] New York City itself employs 287,000 people,[48] 33% of them foreign-born.[49]

52% of New York City's business owners are immigrants.[50]

More than 2,000 refugees have been resettled in New York City since 2010.[51] But since President Trump entered office, New York City has received fewer than half the number of refugees compared to the previous year, from 340 in 2016 to just 164 in 2017.[52] In addition, the city has received far fewer refugees from the countries targeted by President Trump's travel and refugee-admissions restrictions, with 81 resettled in New York City in the previous year to

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and less stringent than those applicable to Chad, Yemen, Syria, Iran, Somalia, Libya, and North Korea.

[47] *Ibid.*

[48] J. David Goodman, *Now Hiring: Under De Blasio, New York's Government Grows to Record Level*, N.Y. Times (Oct. 11, 2016), https://www.nytimes.com/2016/10/12/nyregion/bill-de-blasio-government-jobs.html?_r=0

[49] U.S. Census Bureau, 2012-2016 American Community Survey Five-Year Estimates.

[50] *Ibid.*

[51] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, http://ireports.wrapsnet.org/.U.S.

[52] *Ibid.*

just 23 in the year since the inauguration – a drop of 72%.[53]

In 2017, New York City welcomed 62.8 million visitors, including 13.1 million foreign visitors.[54] New York City is the initial destination for 30% of all international visitors to the U.S., and for nearly 50% of all visitors nationwide from the countries singled out by the President's travel bans.[55] The tourism sector of New York City's local economy includes direct visitor spending in 2016 of $43 billion.[56]

New York City has 87 four-year colleges and universities, with approximately 47,000 international students.[57]

In the six months following President Trump's first travel ban, the Executive Order in January 2017, the

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[53] *Ibid.*

[54] NYC & Company, 2017 NYC Travel & Tourism Visitation Statistics.

[55] NYC & Company, US Department of Commerce/National Travel and Tourism Office/APIS 1-92, Tourism Economics (2015). No data are available for Somalia and Chad.

[56] https://res.cloudinary.com/simpleview/image/upload/v1/clients/newyorkcity/NYC_Company_NYC_Travel_Tourism_OverviewEW_dcf2eeb0-2f7b-4dfa-be7f-c4721564b60b.pdf.

[57] Kevin McCaffrey, International Students in NYC, Economic Data (January 28, 2014), https://www.nycedc.com/blog-entry/international-students-nyc.

NYPD Hate Crime Task Force identified 215 incidents of bias crime that occurred in the city. This was an increase of 31% compared to the same timeframe in the preceding year. In the months following, while the total number of incidents of bias crimes in the city has gone back down, the city recorded a 17% increase in bias crimes against Muslims compared to the same timeframe in the prior year.[58]

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[58] NYPD data through January 19, 2018.

PHILADELPHIA

The population of Philadelphia is approximately 1,559,938,[59] and for the Philadelphia Metropolitan Statistical Area, the estimated population is 6,070,500.[60]

Philadelphia has residents from more than 130 foreign countries.[61]

Philadelphia has a foreign-born population of approximately 203,909, of which 49.5% are naturalized citizens, and the other 50.5% are non-citizens.[62] Approximately 850 Philadelphia residents were born in Iran, Somalia, Syria, and Yemen.[63]

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[59] U.S. Census Bureau, Selected Characteristics of the Native and Foreign-Born Populations, American Community Survey 5-Year Estimates, 2012-2016.

[60] U.S. Census Bureau, Annual Estimates of the Resident Population: Metropolitan and Micropolitan Statistical Area, 2016.

[61] U.S. Census Bureau, Place of Birth for the Foreign-Born Population in the United States, 2012-2016 American Community Survey 5-year Estimates.

[62] U.S. Census Bureau, Comparative Social Characteristics in the United States, 2012-2016 American Community Survey 5-year Estimates.

[63] U.S. Census Bureau, Place of Birth for the Foreign-Born Population in the United States, 2012-2016 American Community Survey 5-Year Estimates. Data are not available about residents born in Chad.

Philadelphia is home to approximately 13,238 Arabic speakers.[64]

Approximately 654,395 people are employed in Philadelphia, and approximately 17% of them are foreign-born, a figure that does not include individuals who work in Philadelphia but reside outside the city.[65]

In 2013, immigrants made up 14% of business owners in Philadelphia; and immigrants are 28% of the area's "Main Street" business owners, including 23% of retail store owners and 34% of restaurant owners.[66]

In 2016, approximately 794 refugees resettled in Philadelphia, including 253 from the targeted countries; in 2017, Philadelphia welcomed 340

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[64] U.S. Census Bureau, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, 2016 American Community Survey 1-year Estimates.

[65] U.S. Census Bureau, Selected Characteristics of the Native and Foreign-Born Populations, 2012-2016 American Community Survey 5-Year Estimates.

[66] Americas Society/Council of the Americas and Fiscal Policy Institute, *Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow* 16, http://www.as-coa.org/sites/default/files/ImmigrantBusinessReport.pdf).

refugees in total, 47 of them from targeted countries.[67]

The Philadelphia Metropolitan Area is home to 31 four-year colleges and universities, whose students include 21,273 international students.[68]

Philadelphia is home to 31 major hospitals.[69]

In 2016, 42 million visitors spent $6.8 billion in the greater Philadelphia area, tourism that generated an estimated $634 million in tax revenues and supported approximately 96,600 jobs.[70]

In the three months immediately after the November 2016 election, 11 hate crimes were reported to Philadelphia police, a 157% increase over the same

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[67] U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, http://ireports.wrapsnet.org/.

[68] CampusPhilly; Christine Farrugia, Rajika Bhandari, Ph.D., *2015 Open Doors, Report on International Educational Exchange*.

[69] http://www.statistics.health.pa.gov/HealthStatistics/HealthFacilities/HospitalReports/Pages/HospitalReports.aspx#.WbAR2NKPIkI

[70] http://files.visitphilly.com/Visit-Philadelphia-annualreport-2017.pdf

three-month period during the prior year.[71] In the same time period, the Philadelphia Commission on Human Relations received reports of 43 separate hate or bias incidents, as compared to just three reports during the same time last year, a 1433% increase.[72] In 2017, Philadelphia received 40 reports of hate crimes, double that from 2016 and more than the total from the prior two years combined.[73]

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[71] Philadelphia Police Department, Research and Analysis Unit Statistical Section; see also Uniform Crime Reporting System, Monthly Summary Hate / Bias Motivation Report for Philadelphia City, http://ucr.psp.state.pa.us/UCR/Reporting/Monthly/Summary/MonthlySumHateUI.asp?rbSet=4.

[72] Philadelphia Commission on Human Relations; *see also* https://beta.phila.gov/press-releases/mayor/statement-on-prosecution-of-hate-crimes; http://read.bi/2ldRbW9.

[73] http://ucr.psp.state.pa.us/UCR/Reporting/Monthly/Summary/MonthlySumHateUI.asp.